



# **THE ATTORNEY GENERAL OF TEXAS**

**WAGGONER CARR**  
**ATTORNEY GENERAL**

**AUSTIN 11, TEXAS**

February 12, 1964

Honorable Frank Hildebrand  
Executive Director  
Texas Tourist Development Agency  
Box TT, Capitol Station  
Austin, Texas 78711

Opinion No. C- 216

Re: Construction of Section  
56 of Article XVI of the  
Constitution of Texas and  
House Bill 11, Acts of the  
58th Legislature, Regular  
Session, 1963, Chapter 137,  
page 370.

Dear Mr. Hildebrand:

Your request for an opinion on the above subject matter asks the following questions:

"1. Does Article 16, Section 56 of the Texas Constitution constitute a legal inhibition on the use of advertising funds appropriated to this Agency?

"If the answer to this question is in the affirmative, we respectfully request that you answer the following questions:

"1. What does the term 'periodicals' in Article 16, Section 56, encompass? Does it, for example, permit the Agency's use of radio, television, outdoor and other media as well as newspapers and magazines?

"2. What constitutes 'national circulation' within the meaning of Article 16, Section 56? What circulation 'yardstick' should the Agency adopt in buying space and time?"

Section 56 of Article XVI of the Constitution of Texas provides as follows:

"The Legislature of the State of Texas shall have the power to appropriate money and establish the procedure necessary to expend such money for the purpose of developing information about the historical, natural, agricultural, industrial, educational, marketing, recreational and living resources of Texas, and for the purpose of informing persons and corporations of other states through advertising in periodicals having national circulation, and the dissemination of factual information about the advantages and economic resources offered by the State of Texas; providing, however, that neither the name nor the picture of any living state official shall ever be used in any of said advertising, and providing that the Legislature may require that any sum of money appropriated hereunder shall be matched by an equal sum paid into the State Treasury from private sources before any of said money may be expended."

House Bill 11, Acts of the 58th Legislature, Regular Session, 1963, Chapter 137, page 370, codified in Vernon's as Article 6144f, Vernon's Civil Statutes, creates the Texas Tourist Development Agency. Section 2 of House Bill 11 prescribes the duties of the Texas Tourist Development Agency, as follows:

"The Texas Tourist Development Agency shall be charged with the responsibility of administering funds appropriated to it in accordance with the provisions of this Act so far as possible to achieve the following:

"(a) Promote and advertise, by means of radio, television, and newspapers and other means deemed appropriate, tourism to Texas by non-Texans, including persons from foreign countries, and to promote travel by Texans to the State's scenic, historical, natural, agricultural, educational, recreational and other attractions.

"(b) Coordinate and stimulate the orderly but accelerated development of tourist attractions throughout Texas.

"(c) Conduct in the broadest sense a public relations campaign to create a responsible and accurate national and international image of Texas.

"(d) Cooperate fully with the agency in charge of operations of the State's park system in all matters relating to promotion of tourism.

"(e) Cooperate with the Texas Highway Commission in the administration of the Highway Commission's collateral program of highway map distribution and operation of Travel Information Bureaus and other tourist related functions conducted by the Texas Highway Commission.

"(f) Encourage Texas communities, organizations, and individuals to cooperate with its program by their activities and use of their own funds and to collaborate with these organizations and other governmental entities in the pursuit of the objectives of this Act."

In Attorney General's Opinion C-25 (1963), it was held:

"It appears from the wording of Section 56 of Article XVI that the Legislature has the power to appropriate money for three purposes: (1) 'for the purpose of developing information about the historical, natural, agricultural, industrial, educational, marketing, recreational and living resources of Texas . . .', and (2) 'for the purpose of informing persons and corporations of other states through advertising in periodicals having national circulation . . .', and (3) 'the dissemination of factual information about the advantages and economic resources offered by the State of Texas . . .'. It is clear that purpose (1) does not pertain to advertising, but applies only to the developing of certain information. Where persons and corporations of other states are to be informed about the advantages and economic resources of Texas through the medium of advertising in periodicals, such periodicals must have a national circulation; however, this limitation is clearly applicable only to this particular medium.

"You are, therefore, advised that the Legislature may authorize the expenditure of money under Section 56 of Article XVI of

the Texas Constitution for the purpose of the dissemination of factual information about the advantages and economic resources offered by the State of Texas. The only limitation placed upon the Legislature as to its choice of the method of the dissemination of factual information about the advantages and economic resources offered by the State of Texas is that when the advertising medium chosen for the purpose of disseminating such information to persons and corporations of other states is a periodical, it must be one of national circulation."

In view of the foregoing, you are advised that the expenditure of advertising funds appropriated to the Texas Tourist Development Agency must be expended in compliance with Section 56 of Article XVI of the Constitution of Texas. The limitation of advertising in periodicals having national circulation applies only to that particular medium and does not apply to the use of radio, television, outdoor or other media.

The term "national circulation" is not defined by the provisions of Section 56 of Article XVI of the Constitution of Texas and there is no particular yardstick that can be applied precisely. The determination of whether or not a particular periodical meets this requirement is a question of fact to be determined by your agency. If the advertising in question is designed to appeal to the public at large then the periodical should be circulated generally throughout the United States; however, if the advertising in question is directed toward a particular ethnic group or a group having a common economic, social, recreational or avocational interest, it is our opinion that the spirit and intent of this constitutional provision would be met by placing such advertising in a periodical which is circulated generally among such group throughout the United States.

#### SUMMARY


The Texas Tourist Development Agency may expend monies appropriated for advertising by the use of radio, television, outdoor and other media, as well as newspapers and magazines. Whenever a periodical is used for the purpose of advertising, such periodical must

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be one of national circulation.

Yours very truly,

WAGGONER CARR  
Attorney General

By   
John Reeves  
Assistant

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APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
W. O. Shultz  
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APPROVED FOR THE ATTORNEY GENERAL  
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